TOM HURD

IBLA 83-2 Decided April 3, 1984

Appeal from decision of Colorado State Office, Bureau of Land Management, rejecting oil and gas lease offer C-34921.

Affirmed.

1. Notice: Generally--Oil and Gas Leases: Rentals

When, pursuant to 43 CFR 3112.4-1, BLM sends notice by certified mail to a simultaneous oil and gas applicant at the address of record that the executed lease agreement and rental must be returned to BLM within 30 days of receipt, and the notice is returned to BLM marked "UNCLAIMED" by the Postal Service, and where nondelivery did not occur as a result of negligence of the Postal Service, the applicant is considered to have been served at the time BLM receives the returned, undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the notice. A tender of the lease agreement by the applicant more than 30 days subsequent to the date of constructive delivery is properly rejected.

2. Estoppel--Oil and Gas Leases: Rentals--Regulations: Generally--Statutes

An essential element of a claim for estoppel is that the party asserting it must be ignorant of the true facts. Since, however, all persons are presumed to have knowledge of relevant statutory and regulatory provisions, an individual may not premise a claim of estoppel on information or advice contrary to such a provision, since the individual is properly charged with knowledge of the true facts.

APPEARANCES: Wiley Y. Daniel, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Tom Hurd appeals from the August 26, 1982, decision of the Colorado State Office, Bureau of Land Management (BLM), rejecting simultaneous oil and gas lease application C-34921 for parcel C0-11 in the November 1981 drawing.

BLM rejected the offer because appellant's executed lease offers and the first year's rental were not received by BLM within 30 days of receipt of the notice by the applicant, as required by 43 CFR 3112.4-1(a) (1982).

On May 28, 1982, BLM had transmitted, by certified mail, a notice and lease offer indicating that appellant had received first priority for issuance of the aforementioned oil and gas lease. The Postal Service attempted delivery of the notice on June 3 and again on June 14, 1982. When the applicant failed to claim the mail, it was returned on June 18, 1982, stamped, "UNCLAIMED." The returned envelope was received by BLM on June 25, 1982. 1/

On appeal, it is alleged that appellant first learned that his application had been selected with first priority in March 1982 by a letter from the Fairway Exploration Company, Inc. Appellant states that he contacted BLM by phone several times to determine the status of his offer and was informed that it would be mailed on June 14, 1982, or the following Monday. Appellant indicates that he watched the mail but never received the offer. Appellant contends that on July 6, 1982, he again called BLM and was informed that the offer had been returned to BLM by the Postal Service which had been unable to make delivery. On July 7, 1982, appellant personally picked up the lease offers and notice from BLM. He states that, in reading the document, he became aware of the 30-day period in which the offers must be filed and inquired as to when that period began. Appellant avers that a BLM employee, after checking with her supervisor, informed him that the 30-day period started on the day he picked up the notice from BLM. Appellant contends that, in reliance on this information, he did not file his completed offer and payment until July 28, 1982.

Appellant advances three separate arguments in his appeal: (1) BLM erred in determining the date of constructive receipt of the notice and rental offer and, in fact, the offer and payment were timely made; (2) the Postal Service, which was acting as agent for BLM in delivering the notice, did not adhere to Postal Service regulations and prematurely returned the mailing to appellant's detriment, and he should not be penalized for the Postal Service's mistake; and (3) since appellant acted on the information provided by an employee of BLM as to commencement of the 30-day period, BLM should be estopped from asserting that his notice and rental payment were not timely filed.

[1] Insofar as the first ground is concerned, while appellant is correct in his assertion that BLM improperly computed the time in which return of the completed documents was required, even when the time period is properly computed, the filings were still untimely. As earlier noted, the envelope indicates that delivery of the offer was attempted on June 3 and 14, 1982. On June 18, 1982, the post office returned the unclaimed envelope to BLM. BLM held that constructive receipt occurred on June 18. This is not correct.

1/ The BLM decision incorrectly stated that the parcel was received on June 26, 1982. The subject envelope, however, is clearly stamped "REC'D CSO (Colorado State Office) MAILROOM, JUN 25, 1982."

Constructive service has been held to take effect at the time of the return by the Postal Service of an undelivered certified letter to BLM. Betty Alexandria, 53 IBLA 139 (1981); see also 43 CFR 4.401(c)(3). A document is not returned to BLM until BLM receives it. Since BLM received the unclaimed envelope on June 25, 1982, constructive service was effected as of that date. Michele M. Dawursk, 71 IBLA 343, 347 (1983). This being the case, appellant had until July 26, 1982 (since July 25 was a Sunday), in which to submit the rental and offer. These documents, however, were not submitted until July 28, 2 days late.

There is, however, an exception to this constructive service rule. The Board has held that where the negligence of the Postal Service, while acting as agent for BLM in transmitting the notice, has precluded effective actual notice, the Board will not consider notice to have been constructively served pursuant to 43 CFR 1810.2(b). Joan L. Harris, 37 IBLA 96 (1978). In the instant case, appellant contends that Postal Service regulation 39 CFR 111.4, which incorporates by reference the Domestic Mail Manual (DMM), requires the Postal Service to hold undelivered certified mail for at least 15 days after the date of the second notice of attempted delivery.

The relevant DMM section states:

> The carrier will leave a notice of arrival on Form 3849-A, Delivery Notice or Receipt, if he cannot deliver the certified article for any reason. The article will be brought back to the post office and held for the addressee. If the article is not called for within 5 days, a second notice on Form 3849-B, Delivery Reminder or Receipt, will be issued. If the article is not called for or its redelivery requested, it will be returned at the expiration of the period stated by the sender, or after 15 days if no period is stated.

(DDM section 912.55). This regulation could conceivably be interpreted as appellant indicates; however, we have found a total of 15 days from the date of the first attempted delivery to be consistent with Postal Service policy. See Michele M. Dawursk, supra at 347. Thus, we can find no error attributable to the Postal Service in this case.

Under the provisions of 43 CFR 3112.4-1(a) (1982), the executed lease agreement and first year's rental payment must be filed in the proper BLM office within 30 days from the date of receipt of notice. BLM may not accept the forms and rental payment after the 30 day period because the rights of the second- and third-qualified applicants have intervened. See Dawson v. Andrus, 612 F.2d 1280 (10th Cir. 1980); Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). Strict compliance with the above regulation is mandatory in order to ensure fairness and uniformity to all applicants in the simultaneous drawing. Hampton P. Stewart, 72 IBLA 358 (1983). Thus, the State Office correctly determined that the rental and lease offers were not timely filed, and that appellant had thereby forfeited his priority.

[2] As to appellant's estoppel argument, the Board has repeatedly held that reliance on erroneous information given by an employee of the Department cannot serve to excuse compliance with the applicable law and

regulations, nor can it relieve the claimant of the consequences imposed by statute or regulation for failure to comply with such requirements. See John Plutt, Jr., 53 IBLA 313 (1981). As we have noted, an essential element of an estoppel claim is that the party asserting it must not only be actually ignorant of the true facts, he must also not be in a position in which he could be constructively charged with such knowledge. In the instant case, the applicable regulation, 43 CFR 1810.2(b), clearly put appellant on notice that constructive receipt would be deemed to have occurred no later that June 25, 1982. It is well established that all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Francis X. Furlong II, 73 IBLA 67 (1983). Because of the knowledge imputed to him, appellant cannot successfully claim his ignorance of the material facts. See Francis X. Furlong II, supra. 2/

Inasmuch as appellant failed to comply with the regulatory requirements of 43 CFR 3112.4-1 (1982), the offer to lease was properly rejected in accordance with 43 CFR 3112.6-1(d) (1982).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge

_____

2/ Moreover, when, on July 6, 1982, appellant received actual knowledge that the envelope containing the lease offer had been returned to BLM, he still had over 2 weeks in which to timely file the documents. Prudence should have dictated an immediate submission of the rental and signed lease offer.